

**Deposition Designations for:  
PETER LOCKWOOD  
May 4, 2009**

**Deposition Designation Key**

**Arrowood = Arrowood Indem. Co.  
f/k/a Royal Indem. Co. (Light Green)**

**BNSF = BNSF Railway Co. (Pink)**

**Certain Plan Objectors "CPO" = Government Employees Insurance Co.; Republic Insurance Co.  
n/k/a Starr Indemnity and Liability Co.; OneBeacon America Insurance Co.; Seaton Insurance  
Co.; Fireman's Fund Insurance Co.; Allianz S.p.A. f/k/a Riunione Adriatica Di Sicurtà; and Allianz  
SE f/k/a Allianz Aktiengesellschaft; Maryland Casualty Co.; Zurich Insurance Co.; and Zurich  
International (Bermuda) Ltd.; Continental Casualty Co. and Continental Insurance Co. and  
related subsidiaries and affiliates; Federal Insurance Co.; and AXA Belgium as successor to Royal  
Belge SA (Orange)**

**CNA = Continental Cas. Co & Continental Ins. Co. (Red)**

**FFIC = Fireman Funds Ins. Co. (Green)**

**FFIC SC = Fireman Funds Ins. Co. "Surety Claims" (Green)**

**GR = Government Employees Ins. Co.; Republic Ins. Co. n/k/a Starr Indemnity and Liability Co.**

**Libby = Libby Claimants (Black)**

**OBS = OneBeacon America Ins. Co. and Seaton Ins. Co. (Brown)**

**PP = Plan Proponents (Blue)**

**Montana = State of Montana (Magenta)**

**Travelers = Travelers Cas. and Surety Cos. (Purple)**

**UCC & BLG = Unsecured Creditors' Committee & Bank Lenders Group (Lavender)**

**AFNE = Assume Fact Not in  
Evidence**

**AO = Attorney Objection**

**BE = Best Evidence**

**Cum. = Cumulative**

**Ctr = Counter Designation**

**Ctr-Ctr = Counter-Counter**

**ET = Expert Testimony**

**F = Foundation**

**408 = Violation of FRE 408**

**H = Hearsay**

**IH - Incomplete Hypothetical**

**L = Leading**

**LA = Legal Argument**

**LC = Legal Conclusion**

**LPK - Lacks Personal Knowledge**

**LO = Seeking Legal Opinion**

**NT = Not Testimony**

**Obj: = Objection**

**R = Relevance**

**S = Speculative**

**UP = Unfairly Prejudicial under Rule 403**

**V = Vague**

1 IN THE UNITED STATES BANKRUPTCY COURT  
2 FOR THE DISTRICT OF DELAWARE

3 In Re: : Chapter 11  
4 :  
5 : Case No.  
6 W.R. GRACE & CO., et al, : 01-01139 JKF  
7 :  
8 : (Jointly  
9 Debtors : Administered)

10 - - -  
11 Monday, May 4, 2009

12 Continuation of oral  
13 deposition of PETER VAN N. LOCKWOOD,  
14 ESQUIRE, taken pursuant to notice, was  
15 held at the offices of CAPLIN & DRYSDALE,  
16 One Thomas Circle N.W., Suite 1100,  
17 Washington, DC 20005, commencing at  
18 12:05 p.m., on the above date, before  
19 Lori A. Zabielski, a Registered  
20 Professional Reporter and Notary Public  
21 in and for the Commonwealth of  
Pennsylvania.

22 MAGNA LEGAL SERVICES  
23 Seven Penn Center  
1635 Market Street  
8th Floor  
24 Philadelphia, Pennsylvania 19103

<p>1 THE WITNESS: That's 2 unanswerable, because assuming 3 that you are asking about the 4 Grace Trust, which is what we are 5 here to talk about, the Grace 6 Trust, A, doesn't exist; B, 7 doesn't have any operating 8 history; C, hasn't established 9 what the procedures and personnel 10 to handle claims are; and, D, 11 depending upon the complexities of 12 individual claims subject to 13 individual review and the back and 14 forth between the Trust claims 15 handling personnel and the 16 plaintiff and plaintiff's lawyer, 17 there is no set period of time 18 that any individual claim would 19 require for individual review that 20 I am aware of.</p> <p>21 BY MR. COHN: 22 Q. So is it your testimony that 23 the Asbestos PI Committee drafted this 24 TDP and proposed it as part of a Plan</p>	<p>Page 478</p> <p>1 that is as efficient in processing 2 claims through individual review 3 or otherwise as is reasonably 4 possible and could be done at a 5 reasonable cost per claim. Beyond 6 that, I really don't know anything 7 more to say.</p> <p>8 BY MR. COHN: 9 Q. If a claimant receives an 10 offer upon individual review and chooses 11 not to accept the offer, what is his next 12 step?</p> <p>13 MR. FINCH: Object to form. 14 THE WITNESS: It's some form 15 of mediation and 16 binding/nonbinding arbitration as 17 the steps set forth in the TDP. I 18 am riffling through the pages at 19 the moment to find it. 20 Section 5.10 of the TDP 21 addresses ADR procedures that the 22 Trust is to implement, and, to my 23 knowledge, I think that's the next 24 step after there is a failure to</p>
<p>1 with no expectation whatsoever as to the 2 time frames that it would take to process 3 claims upon individual review? 4 MR. SCHIAVONI: Objection to 5 form with regard to the term 6 "committee" and whether that's 7 intended to include Mr. Cohn's 8 clients or not. 9 MR. FINCH: Object to form. 10 THE WITNESS: I am not aware 11 of any expectations of the 12 committee on that subject that 13 aren't contained in the TDP, and I 14 don't recall seeing any in the 15 TDP. You might want to ask 16 Mr. Inselbuch that question. But 17 I am not aware of any, and I don't 18 think there are any. 19 I do believe the committee 20 had a general expectation that the 21 trustees, as part of their 22 fiduciary obligations to claimants 23 under this Trust, are expected to 24 create a claims handling structure</p>	<p>Page 479</p> <p>1 agree in individual review between 2 the claimant and the Trust. 3 Again, Mr. Inselbuch 4 probably has more familiarity with 5 Trust practices than I do. 6 BY MR. COHN: 7 Q. All right. I think what I 8 will do is there are a whole line of such 9 questions, but I will wait for 10 Mr. Inselbuch, if your testimony is that 11 he would be best equipped to answer those 12 questions. 13 A. I think it is a fair 14 statement that Mr. Inselbuch has had a 15 more detailed involvement in the drafting 16 of the TDP and more personal experience 17 in the operation of other trusts that, to 18 some extent, this Trust is modeled after. 19 So, to that extent, I think you are 20 probably correct. 21 MR. FINCH: Can I confer 22 with my client for just a second, 23 Mr. Cohn? 24 MR. COHN: Sure.</p>

<p>1 MR. FINCH: Let's go off the 2 record. 3 (There was a discussion held 4 off the record at this time.) 5 MR. FINCH: Back on the 6 record. 7 THE WITNESS: Mr. Finch 8 reminded me that, as I testified 9 on Friday, there are certain 10 provisions of the TDP that are 11 unique to this TDP and, therefore, 12 have not been the subject of prior 13 experience with other trusts and, 14 in particular, Sections 5.12 and 15 5.13, which I testified about at 16 some length. 17 I have probably had at least 18 as great, if not a greater, role 19 in the creation of those sections 20 that Mr. Inselbuch did. So I 21 don't know -- to suggest that 22 there are no questions that you 23 can ask about the TDP, that I 24 might not have as much or more</p>	Page 482	<p>1 what I would regard as insurance law, 2 including a fair amount about 3 comprehensive or CGL policies. 4 Q. And do you understand, at 5 least in general terms, the distinction 6 between products/completed operations 7 claims, on the one hand, and 8 non-products/non-completed operations 9 claims, on the other? 10 MR. FINCH: Object to form. 11 MS. DeCRISTOFARO: Object to 12 form. 13 MR. FINCH: Why don't you 14 define it so he knows exactly what 15 you are talking about. 16 You can answer. Object to 17 form. 18 THE WITNESS: If you are 19 using those terms as they are used 20 in comprehensive general liability 21 policies, I think I have a general 22 understanding of that, but I 23 certainly would not profess to be 24 an expert on the subject.</p>	Page 484
<p>1 knowledge than Mr. Inselbuch. 2 But, by and large, the provisions, 3 such as Section 5.10, that we were 4 just discussing that are fairly 5 what I would call standard TDP 6 provisions, my answer stands, that 7 he would be more knowledgeable on 8 those than I would. 9 BY MR. COHN: 10 Q. Thank you. 11 In that case, let's turn to 12 insurance. Have you had occasion to 13 familiarize yourself with Grace's 14 insurance coverage for asbestos PI 15 claims? 16 A. Only at a pretty general 17 level as was demonstrated on Friday. 18 Q. Are you generally familiar 19 with comprehensive general liability 20 insurance? 21 A. In the course of my work in 22 these bankruptcy cases over the last 15 23 or 20 years, I have had occasion to learn 24 in a non-expert capacity a fair amount of</p>	Page 483	<p>1 BY MR. COHN: 2 Q. And would you mind if when I 3 refer to products/completed operations 4 claims under a standard CGL policy, if I 5 just use the term "products claims"? 6 A. That's fine. 7 Q. And would you mind if when I 8 refer to non-products/non-completed 9 operations claims under a standard CGL 10 policy, if I just call them "non-products 11 claims"? 12 A. That's fine. 13 MR. SCHIAVONI: We will 14 object, though, Dan. 15 BY MR. COHN: 16 Q. Is it your understanding -- 17 strike that. 18 Is it the understanding of 19 the Asbestos PI Committee that the Libby 20 claims hold non-products claims? 21 A. I don't think the Asbestos 22 Claimants Committee has an understanding 23 on that subject. We understand that the 24 Libby claimants contend that they have</p>	Page 485

PP obj:  
F

<p><i>Libby</i></p> <p>1 non-products claims.</p> <p>2 Q. Is it the committee's</p> <p>3 understanding that other asbestos PI</p> <p>4 claimants besides the Libby claimants</p> <p>5 hold non-products claims?</p> <p>6 MR. SCHIAVONI: I object to</p> <p>7 form; again, vague and ambiguous</p> <p>8 with regard to the committee.</p> <p>9 Mr. Cohn, are you asking</p> <p>10 whether your own clients</p> <p>11 understand this or by majority</p> <p>12 vote or before -- how?</p> <p>13 MR. COHN: Thank you,</p> <p>14 Mr. Schiavoni.</p> <p>15 You may answer the question.</p> <p>16 THE WITNESS: It is the</p> <p>17 committee's understanding that</p> <p>18 there are an unknown number of</p> <p>19 present and future claimants</p> <p>20 whose --</p> <p>21 MR. SCHIAVONI: We also</p> <p>22 object, that the question calls</p> <p>23 for waiver of the attorney-client</p> <p>24 privilege and any common interest</p>	<p><b>PP Obj:F</b> Page 486</p> <p>1 committee knows from public</p> <p>2 sources. He is not testifying</p> <p>3 about the committee's work product</p> <p>4 or what communications may be</p> <p>5 privileged between the committee</p> <p>6 members, on the one hand, and</p> <p>7 counsel, on the other.</p> <p>8 MR. SCHIAVONI: He's</p> <p>9 testifying about -- he's a lawyer.</p> <p>10 He's testifying about what a</p> <p>11 lawyer thinks and what a group of</p> <p>12 lawyers think --</p> <p>13 MR. FINCH: No, he is not.</p> <p>14 MR. SCHIAVONI: -- about a</p> <p>15 legal issue.</p> <p>16 MR. FINCH: No, he is not.</p> <p>17 MR. SCHIAVONI: All right.</p> <p>18 We can brief it later.</p> <p>19 THE WITNESS: The</p> <p>20 committee's position, to my</p> <p>21 knowledge, on this subject has</p> <p>22 been expressed in briefs filed in</p> <p>23 the court, and I will reiterate</p> <p>24 that position as expressed in</p>
<p>1 privilege.</p> <p>2 MR. FINCH: We disagree with</p> <p>3 that assertion. He didn't ask</p> <p>4 about communications with the</p> <p>5 committee or its counsel.</p> <p>6 Read back the question.</p> <p>7 (The reporter read from the</p> <p>8 record as requested.)</p> <p>9 MR. FINCH: To the extent</p> <p>10 you can answer that without</p> <p>11 revealing privileged</p> <p>12 communications, you may do so. I</p> <p>13 don't think it calls for</p> <p>14 privileged communications on its</p> <p>15 face.</p> <p>16 MR. SCHIAVONI: Again, we</p> <p>17 take the position that this</p> <p>18 constitutes the comprehensive</p> <p>19 waiver, to the extent you are</p> <p>20 testifying about the understanding</p> <p>21 of the committee.</p> <p>22 MR. FINCH: No. He's</p> <p>23 testifying about the position of</p> <p>24 the committee and what the</p>	<p>Page 487</p> <p>1 briefs filed in the court, which</p> <p>2 is that at some theoretical level,</p> <p>3 since the committee has not</p> <p>4 undertaken to any sort of specific</p> <p>5 factual investigation on this</p> <p>6 subject, that there are or could</p> <p>7 be claims that under CGL</p> <p>8 non-products limits would be for</p> <p>9 insurance purposes covered by the</p> <p>10 same CGL coverage that Libby</p> <p>11 claimants' claims are, i.e. under</p> <p>12 non-products coverage if the Libby</p> <p>13 claimants' claims are covered by</p> <p>14 non-products coverage.</p> <p>15 The point being that the</p> <p>16 committee's position is that</p> <p>17 whatever the Libby claimants</p> <p>18 assert to be the unique or</p> <p>19 identifying characteristics of</p> <p>20 their claims that would bring them</p> <p>21 under the, quote, non-products,</p> <p>22 close quote, coverage of certain</p> <p>23 Grace CGL policies, that there are</p> <p>24 other claimants who either have or</p>

*Libby*

1 Q. I hand you a document that  
 2 has been marked as ACC 30(b)(6)-18, and  
 3 for the information of those in the room  
 4 and on the telephone, this is Exhibit-8  
 5 from the Plan Exhibit Book, namely the  
 6 Best Interest Analysis.

7 A. I have it.

8 Q. Now, in that document, Grace  
 9 places a value of \$500 million on Grace's  
 10 unsettled insurance rights.

11 Does the asbestos personal  
 12 injury -- strike that.

13 Does the Asbestos PI  
 14 Committee agree with that figure?

15 MR. FINCH: Object to form.

16 MS. BAIER: Objection.

17 MR. FINCH: And object on  
 18 privilege grounds and instruct  
 19 witness not to answer to the  
 20 extent that that would divulge the  
 21 disclosure of privileged  
 22 communications for or work product  
 23 communications.

24 If you have an understanding

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*Libby*

1 application of a Bankruptcy  
 2 Chapter 7 liquidation test.  
 3 BY MR. COHN:  
 4 Q. Would the Asbestos PI  
 5 Committee agree that that figure, namely  
 6 the \$500 million value, represents the  
 7 best available figure for purposes of  
 8 Plan confirmation?

9 MR. FINCH: Object to form,  
 10 mischaracterizes prior testimony.

11 THE WITNESS: I don't even  
 12 know what you mean for purposes of  
 13 Plan confirmation.

14 It's proffered, as I  
 15 understand it, for a very limited  
 16 purpose, determining what would  
 17 happen in the event of a  
 18 hypothetical Chapter 7 liquidation  
 19 as compared with what is projected  
 20 to happen in this proposed Chapter  
 21 11 reorganization.

22 As proposed as a projection  
 23 for that purpose and given that  
 24 the committee is a Plan proponent,

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1 independent of that based on  
 2 things that you have learned or  
 3 the committee has learned from  
 4 sources not protected by the  
 5 privilege, you can answer.

6 MS. BAIER: I will object to  
 7 form. It assumes things not in  
 8 the record.

9 THE WITNESS: All the  
 10 committee knows about this is set  
 11 forth in Note D to this exhibit,  
 12 which specifies that the insurance  
 13 recovery is based on the current  
 14 book value of the insurance asset  
 15 (\$500 million). The Note goes on  
 16 to say that the ultimate amount of  
 17 the insurance received will depend  
 18 on a number of factors, and then  
 19 lists the factors.

20 This is a document that was  
 21 prepared by Grace, and the  
 22 committee has accepted it from  
 23 Grace as being what it purports to  
 24 be, Grace's analysis of the

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1 I take it, it is fair to say that  
 2 the committee has accepted that  
 3 number as described for that  
 4 purpose.

5 BY MR. COHN:

6 Q. Who drafted the Asbestos  
 7 Insurance Entity Injunction?

8 A. That was the product of a  
 9 group effort along with the rest of the  
 10 Plan. I don't recall who crafted the  
 11 first draft of what is ultimately in the  
 12 Plan.

13 Q. What is the purpose of the  
 14 Asbestos Insurance Entity Injunction?

15 A. My understanding of the  
 16 purpose is that its principal rationale  
 17 is that there is a variety of types of  
 18 insurance rights that are being  
 19 transferred to the Trust for the benefit  
 20 of all Trust beneficiaries as part of  
 21 what I will call the deal reflected in  
 22 this Plan.

23 In order to prevent  
 24 individual Trust beneficiaries from

*Libby**Libby*

*Libby*

1 seeking disproportionate shares of  
 2 insurance through direct actions or  
 3 otherwise, the injunction was crafted in,  
 4 I might add, many earlier cases than this  
 5 one, perhaps not in precisely the same  
 6 language, but the concept has been around  
 7 for a while, to protect the Trust and its  
 8 beneficiaries from having people do what  
 9 I would call jumping the queue in getting  
 10 disproportionate or attempting to get  
 11 disproportionate shares of insurance that  
 12 should be shared by all.

13 MR. COHN: Let's go off the  
 14 record for a second.

15 (There was a discussion held  
 16 off the record at this time.)

17 BY MR. COHN:

18 Q. Directing your attention to  
 19 what has been marked ACC 30(b)(6)  
 20 Exhibit-4.

21 A. Yes.

22 Q. Namely, the Asbestos  
 23 Insurance Transfer Agreement?

24 A. Yes.

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*Libby*

1 Injunction.  
 2 Q. So the Asbestos PI Trust  
 3 will not end up holding -- strike that.  
 4 Would the committee agree  
 5 that the Asbestos PI Trust will not end  
 6 up holding claims of individual asbestos  
 7 PI claimants against insurers for their  
 8 own misconduct?

9 MS. BAIER: Objection to  
 10 form.

11 MR. SCHIAVONI: Objection to  
 12 form, and, in addition, I would  
 13 say that the question calls for  
 14 the waiver of privilege. And I  
 15 would also ask Mr. Cohn that you  
 16 identify the topic of on your  
 17 30(b)(6) notice that this is  
 18 responsive to.

19 MS. BAIER: I would also  
 20 object to form, especially to the  
 21 word "holding."

22 I think it mischaracterizes  
 23 what the testimony has been and  
 24 confuses the issue by asking what

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*PP Obj:  
R;  
BE*

1 Q. Which is Exhibit-6 to the  
 2 Plan Exhibit Book.  
 3 A. Yes.  
 4 Q. Does that agreement assign  
 5 to the Asbestos PI Trust the claims of  
 6 individual asbestos PI claimants against  
 7 insurers for their own misconduct?

8 MR. FINCH: Object to form.

9 MR. SCHIAVONI: Objection to  
 10 form.

11 THE WITNESS: I don't  
 12 believe this agreement assigns  
 13 claims to the Trust at all. This  
 14 agreement assigns insurance  
 15 rights, according to my  
 16 understanding of the agreement.  
 17 How claims wind up in the Trust is  
 18 by the Asbestos Permanent  
 19 Channelling Injunction.

20 BY MR. COHN:

21 Q. So --

22 A. And the Asbestos Insurance  
 23 Injunction indirectly, perhaps. But  
 24 primarily Asbestos Permanent Channelling

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*Libby*

1 the Trust holds. I don't think  
 2 the Trust holds things.

3 MR. FINCH: I object to  
 4 form. I disagree that it calls  
 5 for privileged information.

6 MR. COHN: With that, would  
 7 the witness do his best.

8 THE WITNESS: The Trust  
 9 certainly isn't going to hold any  
 10 claims. It's going to have claims  
 11 asserted against it. The people  
 12 that hold the claims are the  
 13 claimants.

14 With respect to this, the  
 15 question about whether claims  
 16 involving the, quote, I think you  
 17 phrased it, independent tort  
 18 liability of insurers, close  
 19 quote, the problem I have  
 20 answering that question is that it  
 21 attempts to summarize in a single  
 22 phrase, which does not necessarily  
 23 have a precise legal meaning, a  
 24 complicated set of questions

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*PP Obj:  
R;  
BE*

<p><b>Libby</b></p> <p>1 having to do with how the Asbestos 2 Permanent Channelling Injunction 3 works.</p> <p>4 The provisions in the 5 Asbestos Permanent Channelling 6 Injunction are very complex. As a 7 general proposition, however, I 8 would say that the claims that are 9 being channelled to the Asbestos 10 Personal Injury Trust are claims 11 that are against the Debtors or 12 against various other entities 13 defined as asbestos-protected 14 parties that arise in the manner 15 that satisfies the requirements of 16 Section 524(g), which has very 17 specific language about what can 18 and cannot be channelled to an 19 Asbestos Personal Injury Trust 20 under that section.</p> <p>21 What you are, in effect, 22 trying to ask is does the phrase 23 you have used fit within or 24 without the terminology of Section</p>	<p>Page 506</p> <p>1 committee member. 2 MR. COHN: It's covered by 3 several of the topics, and I would 4 really like to just go on.</p> <p>5 BY MR. COHN: 6 Q. So the question is, will 7 claims of individual asbestos PI 8 claimants against insurers for their own 9 misconduct be an asset of the Asbestos PI 10 Trust?</p> <p>11 MS. BAIER: Objection. 12 MR. FINCH: Objection to 13 form. 14 MR. SCHIAVONI: I would 15 object, asked and answered. 16 And I would remind 17 Mr. Lockwood he has addressed this 18 issue in other cases like 19 Pittsburgh Corning and to the 20 extent you need to go any further here, I think it raises a whole host of issues about waiver. 21 MS. DeCRISTOFARO: Note my 22 objection, too.</p>
<p><b>CNA</b></p> <p><b>Libby</b></p> <p>1 524(g) where the term as such is 2 not used. So I can't really 3 answer the question yes or no as 4 stated.</p> <p>5 All I can tell you is that 6 the Asbestos Permanent Channelling 7 Injunction, in my understanding, 8 is not intended to channel to the 9 Trust claims that Section 524(g) 10 does not authorize to be 11 channelled to the Trust.</p> <p>12 BY MR. COHN: 13 Q. All right. We have gone a 14 little afield from the question, so if I 15 can go back and ask what I meant to, and 16 let's try it again.</p> <p>17 MR. SCHIAVONI: Again, 18 Mr. Cohn, we would ask you to 19 identify in the notice where it is 20 you identify this as a topic, 21 because to the extent Mr. Lockwood 22 is not designated by the committee 23 on it, it's not really a proper 24 question to pose to him by another</p>	<p>Page 507</p> <p>1 THE WITNESS: Would you read 2 back the question, please? 3 (The reporter read from the 4 record as requested.)</p> <p>5 MS. DeCRISTOFARO: 6 Objection. 7 MR. FINCH: Objection. 8 THE WITNESS: As phrased, 9 the answer to that question is 10 unequivocally no. 11 MR. COHN: Thank you.</p> <p>12 BY MR. COHN: 13 Q. Now, directing your 14 attention to the Asbestos Insurance 15 Entity Injunction, if an asbestos PI 16 claimant has a claim against an insurer 17 based on the insurer's own alleged 18 misconduct, does the Asbestos Insurance 19 Entity Injunction bar him from asserting 20 that claim?</p> <p>21 MR. FINCH: Objection. 22 MR. SCHIAVONI: Objection, 23 calls for a legal conclusion and objection to form and the other</p>

1 litigation concerning the applicability  
 2 of and injunction similar to the Asbestos  
 3 Insurance Entity Injunction in any other  
 4 case?

5 MR. WISLER: Can you repeat  
 6 that? I didn't hear you, Dan.

7 BY MR. COHN:

8 Q. Are you aware of any  
 9 litigation concerning the scope of the  
 10 asbestos or an injunction similar to the  
 11 Asbestos Insurance Entity Injunction in  
 12 any other case?

13 A. The only litigation that I  
 14 am aware of that's remotely similar --  
 15 and I don't profess to know all the  
 16 litigation that might be floating around  
 17 out there -- is actually litigation over  
 18 an entity that is closer to the Asbestos  
 19 Permanent Channelling Injunction. And  
 20 it's the Travelers injunction that's  
 21 presently before the United States  
 22 Supreme Court. To be more specific, it's  
 23 the Manville injunction that Travelers is  
 24 litigating about.

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 BNSF

Libby

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PP  
Obj:  
R

1 asbestos personal injury claims against  
 2 or arising out of Grace is something that  
 3 has to be channelled to the Trust because  
 4 it fits within the definition of an  
 5 asbestos personal injury claim under  
 6 524(g), and that in order that Grace be  
 7 protected from such indemnity claims, the  
 8 roughly \$3 billion that Grace and various  
 9 related parties are paying to this Plan  
 10 is, in part, on behalf of those settled  
 11 insurers.

12 So if the question means, is  
 13 Maryland Casualty Company paying  
 14 something over and above what Grace is  
 15 paying, the answer is not to my  
 16 knowledge.

17 Q. Is there a benefit to the  
 18 Grace Bankruptcy Estate or to the  
 19 Asbestos PI Trust from having the  
 20 Asbestos PI Channelling Injunction  
 21 protect Maryland Casualty Company?

22 MR. FINCH: Object to that  
 23 question to the extent that it  
 24 calls for speculation.

BNSF

PP Obj:

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1 Q. Has Maryland Casualty  
 2 Company paid or agreed to pay any money  
 3 or other consideration in order to be  
 4 covered by the Asbestos PI Channelling  
 5 Injunction?

6 A. Well, that depends on how  
 7 you use the term "pay."

8 The basis, which I take it  
 9 which is what you are asking for, for  
 10 Maryland Casualty being a protected party  
 11 to this Plan is that in the past,  
 12 Maryland Casualty Company has paid a lot  
 13 of money to Grace and entered into a  
 14 settlement agreement with Grace which  
 15 releases that coverage and which Grace  
 16 indemnifies it against claims.

17 As I testified, I believe,  
 18 on Friday, Grace, as part of this deal,  
 19 Grace has had two positions that it has  
 20 taken that we have -- we being the  
 21 committee and its representative --  
 22 accepted. Number one is a claim for  
 23 indemnity from a settled insurer based on  
 24 claims against that insurer that are

BNSF

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PP  
Obj:  
R

1 Mr. Wisler: Could you read  
 2 the question back, please?

3 MR. SCHIAVONI: Objection to  
 4 form; objection, calls for waiver;  
 5 objection, calls for legal  
 6 conclusion.

7 MR. FINCH: I disagree that  
 8 it calls for waiver.

9 But you can answer.

10 THE WITNESS: Could you  
 11 reread the question?

12 MR. COHN: Let's go off the  
 13 record for a second.

14 (There was a discussion held  
 15 off the record at this time.)

16 (The reporter read from the  
 17 record as requested.)

18 Mr. Wisler: I object to  
 19 form.

20 THE WITNESS: Yes.

21 BY MR. COHN:

22 Q. What is that benefit?

23 MR. FINCH: You can answer  
 24 the question to the extent that it

BNSE

Libby

1 doesn't reveal privileged or work  
2 product information.

3 THE WITNESS: The benefit to  
4 the Grace Estate is that it  
5 eliminates potential claims by  
6 Maryland Casualty Company against  
7 the Debtor and its Estate. That's  
8 the benefit.

9 BY MR. COHN:

10 Q. Is there any agreement  
11 between Grace and Maryland Casualty  
12 Company which requires Grace to indemnify  
13 Maryland Casualty Company for its own  
14 misconduct?

15 MR. FINCH: Objection to the  
16 extent that calls for a legal  
17 opinion. And object to the extent  
18 that there is information  
19 responsive to this question that's  
20 privileged, I instruct you not to  
21 answer if it would reveal  
22 privileged communications.

23 If you can answer the  
24 question without revealing

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PP  
Obj:  
R

1 Mr. Schiavoni for Arrowood.  
2 We join your objection, and we  
3 would also say this is outside the  
4 scope of the designation and that  
5 Mr. Lockwood doesn't have to  
6 answer every single question no  
7 matter what it is. This is not in  
8 the designation.

9 MR. FINCH: Can we hear back  
10 the question?

11 (The reporter read from the  
12 record as requested.)

13 THE WITNESS: In my  
14 understanding, there is an  
15 agreement between Grace and  
16 Maryland casualty company which  
17 contains indemnification  
18 provisions. I am not in a  
19 position to express an opinion on  
20 what the scope of that  
21 indemnification is, much less  
22 whether or not Grace and Maryland  
23 Casualty agree on what the scope  
24 of that indemnification is.

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1 privileged communications, you can  
2 do so --

3 MR. SCHIAVONI:  
4 Mr. Lockwood, I think --

5 MR. FINCH: Tank, let me  
6 finish.

7 MR. SCHIAVONI: Oh, I am  
8 sorry.

9 MR. FINCH: But I still  
10 object to the extent that it calls  
11 for a legal opinion.

12 MS. BAIER: I also object.  
13 You have asked Mr. Lockwood  
14 whether he knows about -- you  
15 haven't asked him about whether he  
16 knows. You asked him is there an  
17 agreement between Grace and  
18 Maryland Casualty Company. I  
19 object to the form. You are now  
20 asking Mr. Lockwood to get into  
21 the head of W.R. Grace.

22 MR. SCHIAVONI: I am sorry,  
23 Mr. Finch. I didn't mean to  
24 interrupt you before.

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Page 525

1 BY MR. COHN:

2 Q. Is it the position of the  
3 Asbestos PI Committee that if the  
4 indemnification provisions are construed  
5 to protect Maryland Casualty from its own  
6 misconduct, that such provisions would be  
7 enforceable?

8 MR. FINCH: Object to form,  
9 calls for a legal conclusion.

10 THE WITNESS: It actually  
11 calls for speculation.

12 MR. FINCH: That, too.

13 THE WITNESS: In addition.

14 The committee's  
15 understanding of the way this Plan  
16 works, which is what expresses the  
17 committee's position, is that it's  
18 a legal question which, assuming  
19 that a dispute on this subject  
20 arises at some point in the  
21 future, will be determined by  
22 litigation over, A, what exactly  
23 is the basis for the claim against  
24 Maryland Casualty, legal and

1 can't, he will say he can't answer  
2 the question.

3 MR. SCHIAVONI: If the  
4 answer is please refer to docket  
5 number blankety-blank, then I  
6 agree with you. If the answer is,  
7 as the answers have been to the  
8 other questions, then he's  
9 obviously waived it, because there  
10 is no file.

11 MR. WISLER: Objection.

12 MR. COHN: Would you like  
13 the question read again?

14 THE WITNESS: No. I can  
15 remember the question. Are you  
16 still pressing?

17 MR. COHN: Sure.

18 THE WITNESS: The committee  
19 has not filed either a joinder in  
20 the objection or a response in  
21 opposition to the objection, and I  
22 have no idea whether the committee  
23 is ever going to take a position  
24 on the objection.

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CPO

1 Casualty Company and Zurich in this  
2 bankruptcy case.

3 Mr. Lockwood, what is the  
4 ACC's position as to the viability of  
5 this Plan if the bankruptcy court finds  
6 that one or more of the settled asbestos  
7 insurance companies are not entitled to  
8 524(g) protection?

9 MR. FINCH: Objection, calls  
10 for speculation.

11 I instruct the witness not  
12 to answer the question to the  
13 extent it would reveal privileged  
14 or work product-protected  
15 communications or information. To  
16 the extent you can answer the  
17 question without so doing, you can  
18 do so.

19 THE WITNESS: Well, it's a  
20 hypothetical question, and it  
21 really is unanswerable because it  
22 would depend upon what the reason  
23 that the court gave for denying  
24 the protection. A lot of reasons

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PP Obj:  
R;  
LO;  
F

1 MR. COHN: Thank you,  
2 Mr. Lockwood. No further  
3 questions. I will pass the  
4 witness to whoever is next.

5 Mr. Wisler: I think  
6 Maryland Casualty will be next.  
7 Can we have a 15-minute break,  
8 please?

9 MR. FINCH: I prefer you not  
10 have a 15-minute break. I will  
11 give you five minutes. I would  
12 like you to come down here so we  
13 can hear you better.

14 MR. WISLER: Off the record.

15 (There was a discussion held  
16 off the record at this time.)

17 (There was a break from 1:37  
18 p.m. to 1:56 p.m.)

19 - - -  
20 EXAMINATION

21 - - -  
22 BY MR. WISLER:

23 Q. Mr. Lockwood, my name is  
24 Jeffrey Wisler. I represent Maryland

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CPO

1 that the court might conceivably  
2 give, if it gave such, might have  
3 the effect of blowing up the Plan,  
4 effectively. I mean, there would  
5 be conditions to confirmation that  
6 could not be satisfied nor waived.

7 On the other hand -- I don't  
8 know. I haven't thought enough  
9 about the permutations and  
10 combinations to know whether there  
11 could be some ground on which the  
12 court could deny a particular  
13 settled insurer the right to be a  
14 protected party for some reason  
15 that wouldn't apply sort of  
16 generally to the Plan but which  
17 could, somehow or another, either  
18 the parties could waive that  
19 that -- I really don't know.

20 The committee certainly  
21 doesn't have a position on it,  
22 because the committee, as my  
23 answer has demonstrated so far,  
24 hasn't thought through the

Page 533

PP Obj:  
R;  
LO;  
F

<p>1 hypothetical circumstances that 2 might produce the result that you 3 posit.</p> <p>4 BY MR. WISLER:</p> <p>5 Q. Well, in your answer, you 6 said that there are certainly scenarios 7 where such a ruling could, I think you 8 used the word, blowup the Plan. 9 What would be some examples 10 of that?</p> <p>11 MR. FINCH: Objection, form. 12 MS. BAIER: Objection, calls 13 for speculation.</p> <p>14 THE WITNESS: The Plan 15 provides that a list in Exhibit-5 16 of settled insurers are entitled 17 to be protected parties under the 18 Plan. The rationale for that, as 19 I said earlier, was that they had 20 potential indemnity claims against 21 W.R. Grace.</p> <p>22 If, hypothetically, the 23 court interpreted the statute to 24 say that the on-behalf-of, that</p>	<p>PP Obj: R; LO; F</p> <p>Page 534</p> <p>CPD</p>	<p>1 as Class 6 claims or no longer properly 2 channelled?</p> <p>3 MR. FINCH: Object to form. 4 THE WITNESS: Let me back 5 up. Under bankruptcy law, a 6 bankruptcy court doesn't have a 7 line item veto under which they 8 can exercise particular provisions 9 in the Plan that they don't like 10 but go ahead and confirm the rest 11 of it. The Plan is an integrated 12 whole. Judge Fitzgerald will 13 either confirm the Plan or she 14 will deny confirmation of the 15 Plan.</p> <p>16 The scenario you posit, she 17 would deny confirmation of the 18 Plan because it purported to grant 19 protected party status to entities 20 that she said couldn't be 21 protected, for whatever reason. 22 At that point, everybody involved 23 in this bankruptcy would have to 24 sit down and figure out how to</p>	<p>PP Obj: R; LO; F</p> <p>Page 536</p>
<p>1 Grace somehow or another couldn't 2 make a contribution on behalf of 3 those settled insurers because 4 they weren't putting in fresh 5 money into the Plan so that Grace 6 was left with no protection 7 against indemnity claims because 8 no claims against those insurers 9 were being brought, that would go 10 pretty far way to blowing up the 11 Plan. At a minimum, it would 12 require a whole renegotiation of 13 the Plan, in my opinion, as to 14 that hypothetical.</p> <p>15 BY MR. WISLER:</p> <p>16 Q. Because if an insurer -- let 17 me make sure I understand what you are 18 saying.</p> <p>19 You said that would go a 20 long way towards destroying the Plan. Is 21 that because, for instance, if a settled 22 asbestos insurer with indemnity rights 23 were not protected, then their indemnity 24 claims would no longer be properly listed</p>	<p>PP Obj: R; LO; F</p> <p>Page 535</p> <p>CPD</p>	<p>1 deal with the problem that was 2 created by that. And I have no 3 idea how we would deal with the 4 problem that would be created by 5 that outcome.</p> <p>6 We certainly haven't -- we 7 don't -- if the question is have 8 we got a backstop Plan in the 9 hopper that we can lay on the 10 table, the answer is no.</p> <p>11 BY MR. WISLER:</p> <p>12 Q. What if the ruling was not 13 so global per the example you gave, but 14 individual, to say that one settled 15 asbestos insurance company, for whatever 16 reason, had not given or provided or 17 there was not adequate consideration 18 provided on behalf of that settled 19 asbestos settled insurer?</p> <p>20 MR. FINCH: Objection to 21 form, speculation.</p> <p>22 MS. BAIER: Objection. He's 23 just answered that one.</p> <p>24 THE WITNESS: Yeah, I don't</p>	<p>PP Obj: R; LO; F</p> <p>Page 537</p> <p>PP Obj: R; LO; F</p> <p>PP Obj: R; LO; F</p>

*CPO*

1 understand how -- Grace's  
 2 consideration is a lump sum of  
 3 stuff, notes, cash, warrants,  
 4 insurance, what have you.

5 And, as I analyzed it  
 6 earlier, it's the committee's  
 7 stated position that the statute  
 8 allows Grace under those  
 9 circumstances to designate  
 10 insurers that it settled with and  
 11 have indemnity claims for  
 12 protection against asbestos  
 13 personal injury claims in the  
 14 future.

15 I don't know any basis on  
 16 which a court could say that,  
 17 these 12 asbestos settled insurers  
 18 are just okeydoke to get  
 19 protection under that approach,  
 20 but Insurer Y, for some reason or  
 21 another, isn't. So I can't even  
 22 speculate what your hypothetical  
 23 would entail, much less what its  
 24 consequences would be.

*PP Obj:  
R; LO; F*

Page 538

*CPO*

1 or wasn't properly settled or  
 2 whatever, at that point, I  
 3 don't -- the Plan does not purport  
 4 to provide blanket protection.

5 It provides protection for  
 6 claims that fit within the  
 7 definitions of the Plan, and if  
 8 somehow or another the court  
 9 determines that some particular  
 10 claim doesn't fit within the  
 11 definitions of the claims that  
 12 either are or legally can be under  
 13 524(g) channelled to the Trust,  
 14 then, in my opinion, that would  
 15 not result in the Plan failing a  
 16 condition of the sort I talked  
 17 about earlier. Whether or not  
 18 there could be other consequences  
 19 of such a ruling is a different  
 20 matter.

Page 540

*PP Obj:  
R; LO;  
F; BE*

21 BY MR. WISLER:

22 Q. Let's talk about that  
 23 because you just described the  
 24 possibility that the court could rule

*CPO*

1 BY MR. WISLER:  
 2 Q. So in the ACC's view, all  
 3 the settled asbestos insurance companies  
 4 sort of ride together in terms of whether  
 5 they are entitled to 524(g) protection?

*PP Obj:  
R; LO; F*

Page 539

*CPO*

6 MR. FINCH: Objection,  
 7 mischaracterizes prior testimony;  
 8 object to the form.

9 MR. WISLER: If I  
 10 mischaracterize it, please  
 11 clarify.

12 THE WITNESS: The only  
 13 caveat I would say to that is the  
 14 one that we spent some time  
 15 dancing around with Mr. Cohn  
 16 earlier, that if there was some  
 17 sort of ruling that some certain  
 18 claims couldn't properly be  
 19 channelled against a particular  
 20 insurer while other claims could  
 21 be, i.e. his notional independent  
 22 tort claims versus claims that are  
 23 clearly asbestos PI claim that  
 24 says the coverage isn't exhaustive

*PP Obj:  
R;  
LO;  
F;  
BE**CPO*

1 that some certain claims, in your words,  
 2 were not properly channelled.

3 Is it the ACC's position  
 4 that indemnity claims of a settled  
 5 asbestos insurance company would result  
 6 from those some certain claims would then  
 7 no longer be classified as Class 6 and  
 8 channelled to the Trust?

9 MR. FINCH: Objection, form.

10 MS. BAIER: Can you read  
 11 that over, please?

12 (The reporter read from the  
 13 record as requested.)

14 MS. BAIER: Objection as to  
 15 form.

16 THE WITNESS: If I  
 17 understand the question and  
 18 speaking at a somewhat high level  
 19 of generality, if a claim against  
 20 a settled insurer were ruled not  
 21 to be channelled to the Trust in  
 22 the first instance, because it  
 23 didn't fit within -- because of  
 24 one of two reasons: Either it

Page 541

*PP Obj:  
R; LO;  
F; BE**PP Obj:  
R;  
LO;  
BE;  
F*

<p><b>Libby</b></p> <p>didn't fit within the definition or, alternatively, even though it might be read to fit within the definition, it could not be under Section 524(g) so channelled, you just weren't legally permitted to do so, and the claim went forward, and an indemnity claim were to arise out of that claim, then it is the position of the ACC that that indemnity claim would not be a Class 6 claim, because, by definition, it didn't arise out of an asbestos personal injury claim. It arose out of something that the court had decided since it wasn't channelled was, by definition, not an asbestos personal injury claim.</p> <p>BY MR. WISLER:</p> <p>Q. Is the ACC in agreement with Exhibit-5 of the exhibit book? Are you familiar with that exhibit?</p> <p>A. I am generally familiar with it. The ACC, as a Plan proponent, is --</p>	<p><b>PP Obj: R; LO; BE; F</b></p> <p>Page 542</p> <p><b>CPO</b></p> <p>1 You can answer. 2 THE WITNESS: I don't know 3 that the ACC has a position on 4 what kind of claim it would be at 5 that point. 6 MR. WISLER: Okay. Thank 7 you. 8 - - - 9 EXAMINATION 10 - - - 11 BY MR. MANGAN: 12 Q. Mr. Lockwood, Kevin Mangan 13 on behalf of the State of Montana. I 14 have a few follow-up questions from 15 Mr. Cohn. 16 Specifically, I am going to 17 refer you to ACC Document 11, which is 18 Exhibit-4. It's the TDP. 19 A. Yes, sir. 20 Q. If you could flip to Section 21 5.7? 22 A. Section 5.7 of the TDP. 23 Q. Correct. 24 A. Evidentiary Requirements?</p> <p><b>PP Obj: R; LO; BE; F</b></p> <p><b>CPO</b></p> <p>1 if what you mean by is in agreement with 2 it, we are sponsoring a Plan of which 3 it's an exhibit. So I guess you could 4 say we are in agreement with it. 5 MR. WISLER: That's all I 6 have. Thank you, Mr. Lockwood. 7 MR. MANGAN: Hello. This is 8 Kevin Mangan on the phone. 9 MR. WISLER: One second, 10 please. 11 MR. MANGAN: Sure, Jeff. 12 MR. WISLER: I am sorry. 13 Just one follow-up. I apologize.</p> <p>BY MR. WISLER:</p> <p>Q. Mr. Lockwood, in response to my next-to-the-last question, you testified that the claim we were discussing -- and I am not going to try to repeat all the words -- would not be a Class 6 claim. Is it the ACC's position that it would then under this Plan be a Class 9 claim? MR. FINCH: Object to form.</p>
	<p><b>PP Obj: R; LO; BE; F</b></p> <p>Page 543</p> <p>1 Q. Right. Specifically, 2 5.7(a)(1). 3 A. Correct. 4 Q. If you could take a second 5 and take a look at that. 6 A. Including the subsections 7 (a), (b) and (c) or just the lead in 8 (a)(1)? 9 Q. Just (a)(1). 10 A. Okay. 11 Q. You see the (a)(1) requires 12 a ten-year latency period. 13 A. Correct. 14 Q. The period between the first 15 exposure and diagnosis. 16 Why a ten-year latency 17 period? 18 A. It's my understanding that 19 that is generally considered by the 20 medical profession to be the minimum 21 latency period for asbestos-related 22 diseases to manifest themselves. 23 Q. And is that how that number 24 came up with, to the best of your</p> <p>Page 545</p>

1 Linda Casey. I am with Pepper Hamilton. *PP Obj: R; BE; F; LO*  
 2 I represent BNSF Railway Corporation.  
 3 Mr. Lockwood, are you aware  
 4 that BNSF asserts that Grace purchased  
 5 insurance policies that named BNSF as the  
 6 at that name insurer upon which Grace was  
 7 not also a named insured?

8 MR. FINCH: Object to form,  
 9 foundation.

10 THE WITNESS: I believe I  
 11 recall seeing Grace make such an  
 12 assertion.

13 MS. BAIER: Objection.

14 THE WITNESS: I am not sure,  
 15 frankly, however, whether it was  
 16 Grace that made the assertion or  
 17 BNSF made the assertion. I know  
 18 somebody has made the assertion.

19 BY MS. CASEY:

20 Q. Okay. The follow-up  
 21 question I have on that is, is it the  
 22 ACC's position that as to settled  
 23 insurance companies, settled asbestos  
 24 insurance companies, to the extent that

1 *Arrowood Obj: F; S; LC; IH*  
 2 THE WITNESS: As I hear the  
 3 question and as I interpret the  
 4 Plan, an insurance policy  
 5 purchased by Grace for BNSF, which  
 6 did not provide coverage to Grace,  
 7 only provided coverage to BNSF,  
 8 claims by BNSF would not be  
 9 enjoined unless Grace had somehow  
 10 or another indemnified that  
 11 settled insurer against claims by  
 12 BNSF.

13 And then in that  
 14 hypothetical situation, since I  
 15 haven't seen the policies and have  
 16 no idea what, if any,  
 17 indemnifications they have in  
 18 them, there might be a situation  
 19 in which if the claim by BNSF  
 20 against that policy was an  
 21 asbestos personal injury claim and  
 22 Grace had indemnified that insurer  
 23 against that claim, then under  
 24 those circumstances, as I  
 understand the Plan, that claim

1 *PP Obj: R; BE; F; LO*  
 2 they had, in fact, issued policies to be  
 3 in BNSF where BNSF is the named insurer,  
 4 that the channelling injunction will  
 5 enjoin BNSF post-confirmation from  
 6 asserting coverage claims against the  
 7 settled asbestos insurance company under  
 8 those policies?

8 MR. FINCH: Objection --

9 MS. BAIER: Objection to  
 10 form.

11 MR. PERNICONE: Objection.

12 MR. FINCH: -- form,  
 13 speculation.

14 To the extent you can  
 15 answer the question without  
 16 revealing privileged  
 17 communications or work product,  
 18 you can do so.

19 MR. SCHIAVONI: This is  
 20 Schiavoni. I object to form, and  
 21 I also object to this being  
 22 outside the scope of the  
 23 designation, and calling for a  
 24 legal conclusion.

1 *Arrowood Obj: F; S; LC; IH*  
 2 BNSF  
 3 might well be channelled to the  
 4 Trust. But, as I said before, I  
 5 have no idea whether any such  
 6 indemnification provision exists  
 7 or not.

6 BY MS. CASEY:

7 Q. I am not sure if I  
 8 understand your answer.

9 The claim that BNSF would  
 10 have against the insurer would be  
 11 channelled or the claim the insurer would  
 12 have against Grace for indemnification  
 13 would be channelled, or both?

14 MS. BAIER: Objection as to  
 15 form. It's a hypothetical,  
 16 speculative question.

17 MR. SCHIAVONI: Also, I  
 18 think it calls for speculation  
 19 given the nature of the answer  
 20 that was given.

21 THE WITNESS: Well, it  
 22 clearly calls for speculation.

23 The answer is, in theory,  
 24 both; in reality, only the first,

BNSF

PP Obj:  
R; LO; BE; F

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1 as my colloquy with Mr. Brown on  
 2 Friday, I believe, expressed,  
 3 which is that if the claim were,  
 4 in fact, an asbestos personal  
 5 injury claim that was indemnified  
 6 by Grace, then the claim by BNSF  
 7 against the insurer would be  
 8 enjoined.

9 Once the claim is enjoined,  
 10 there will be no opportunity for  
 11 the insurer to in turn. Have an  
 12 indemnity claim against Grace.

13 If the claim is somehow or  
 14 another not enjoined, then it  
 15 wouldn't be channelled to the  
 16 Trust because the only basis on  
 17 which it could not be enjoined was  
 18 that it was not an asbestos  
 19 personal injury claim in the first  
 20 place. And the Trust picks up  
 21 indemnity liabilities with respect  
 22 to Grace for claims that arise out  
 23 of asbestos personal injury  
 24 claims.

BNSF

1 scenario, but I cannot flatly say  
 2 that there is no conceivable  
 3 combination of facts that might  
 4 preclude that result from taking  
 5 place.

6 BNSF is suing, by  
 7 hypothesis, for coverage of a  
 8 claim against BNSF. What is that  
 9 claim? If somehow or another that  
 10 claim fell within the definition  
 11 of asbestos personal injury claim,  
 12 as defined in the Plan, which I  
 13 don't know whether it would or  
 14 wouldn't, but theoretically it  
 15 might, and if BNSF were held  
 16 liable on that asbestos personal  
 17 injury claim, brought a suit  
 18 against that insurer on the  
 19 separate policy, the insurer  
 20 somehow or another produces what  
 21 seems to me to be highly unlikely,  
 22 which is an indemnity from Grace,  
 23 saying that not only did we  
 24 purchase this insurance policy for

Page 556

PP Obj:  
R; LO;  
BE; F

BNSF

PP Obj:  
R; LO; BE; F

Page 555

1 But, again, I have no idea  
 2 what kind of claims we are talking  
 3 about here, so this is purely at a  
 4 theoretical level of how the Plan  
 5 would work on unspecified facts  
 6 and unspecified contractual  
 7 undertakings.

8 BY MS. CASEY:

9 Q. Let me ask it a different  
 10 way then.

11 Is it the ACC's position  
 12 that the Plan under any circumstances can  
 13 enjoin BNSF from asserting its contract  
 14 rights against the insurers where Grace  
 15 purchased the policy but has not been a  
 16 beneficiary under the policy?

17 MR. FINCH: Objection, form.

18 MS. DeCRISTOFARO: Objection  
 19 to form.

20 MR. SCHIAVONI: Objection to  
 21 form, calls for a legal  
 22 conclusion, calls for speculation.

23 THE WITNESS: It is very  
 24 hard for me to imagine that

BNSF

1 Arrowood Obj:  
LC; S; LF; H  
BNSF's benefit but we gave the  
 2 insurer an indemnity that it would  
 3 never have to pay any money on the  
 4 policy, then it's possible that  
 5 that claim could wind up being  
 6 enjoined because it gave rise to  
 7 an indemnity or would give rise to  
 8 an indemnity claim against Grace  
 9 for an asbestos personal injury  
 10 claim.

11 The problem is it is so  
 12 inconceivable to me that Grace  
 13 could give an indemnity to an  
 14 insurer for a policy that didn't  
 15 cover Grace but was purchased for  
 16 BNSF and which hypothesis had  
 17 never been exhausted. I can't  
 18 imagine how that could come about.

19 So you are forcing me, when  
 20 you give me these hypotheticals,  
 21 to dream up scenarios under which  
 22 the hypothetical might possibly  
 23 apply, no matter how unrealistic  
 24 the scenario appears to me to be.

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PP Obj:  
R; LO;  
BE; F

BNSF

1 And that scenario to me appears to  
 2 be extraordinarily unrealistic, if  
 3 not impossible.

4 BY MS. CASEY:

5 Q. I would like you to turn to  
 6 Exhibit ACC Exhibit-11.

7 MR. FINCH: The TDP?

8 MS. CASEY: Yes, the TDP.

9 THE WITNESS: Okay. I have

10 it.

11 BY MS. CASEY:

12 Q. And specifically 5.12.

13 A. I have it.

14 Q. Okay. 5.12 by its terms  
 15 applies to claims that BNSF and others  
 16 would have against settled asbestos  
 17 insurance companies. Let me ask an  
 18 initial question.

19 It is the ACC's position  
 20 that the Asbestos Insurance Entity  
 21 Injunction also enjoins asbestos claims  
 22 as defined by the Plan from being  
 23 asserted against unsettled asbestos  
 24 insurance companies, correct?

PP Obj:  
R; LO; BE; F

Page 558

H; S; G; O; P; O; R; O; O; H

Libby

1 regarding cash portion. I am not sure I  
 2 understand the basis for saying that the  
 3 channelling of the indemnification claims  
 4 constitutes a substantial contribution to  
 5 the Plan or a benefit to the Plan, to the  
 6 asbestos claimants.

7 Can you explain how that  
 8 constitutes a benefit?

9 MR. FINCH: Objection,  
 10 mischaracterizes prior testimony.

11 THE WITNESS: I don't  
 12 believe I testified that that was  
 13 a benefit to the Trust.

14 The channelling of the  
 15 claims, the indemnity claims,  
 16 against Grace, I testified was a  
 17 benefit to the Grace Estate.

18 The statute, in general,  
 19 says that a protected party has to  
 20 have something contributed on its  
 21 behalf to the Trust in exchange  
 22 for the injunction. That's a very  
 23 broad paraphrase to the statute.

24 So the protection for the

Page 560

PP Obj:  
R; BE;  
LOPP Obj:  
R; LO; BE; F

Page 559

A; R; P; O; M; O; N; A; R; Y

Libby

1 BNSF settled insurance company is the  
 2 injunction. The benefit to the  
 3 Trust, which if it, in effect,  
 4 purchases that protection, is the  
 5 Grace contribution, which Grace is  
 6 making on behalf of itself and  
 7 multiple other entities.

8 BY MS. CASEY:

9 Q. The cash contribution?

10 A. Well, the entirety of the  
 11 contribution. There is cash; there is  
 12 notes; there is warrant; there is  
 13 insurance; and there is the Grace  
 14 Estate's claim against Fresenius and  
 15 Sealed Air.

16 You will recall that  
 17 Fresenius and -- the committee -- the two  
 18 committees, the PI and the PD committees,  
 19 brought claims against Sealed Air and  
 20 Fresenius on behalf of the Grace Estate.  
 21 So when those claims were settled, they  
 22 were not only settled by the entities  
 23 against which they were brought, namely,  
 24 Sealed Air and Fresenius, but, to the

Page 561

PP Obj:  
R; BE;  
LO

Libby

BNSF

1 A. In general, that's true.  
 2 The language is very specific as to what  
 3 kind of claims that it enjoins against  
 4 non-settled insurers, but subject to the  
 5 caveat that you have to look at the  
 6 definition to know exactly which kind of  
 7 claims you are talking about, yes.

8 Q. Does the TDP have a  
 9 provision by which BNSF Railway can  
 10 assert its enjoined claims against the  
 11 unsettled asbestos insurance companies?

12 MR. SCHIAVONI: Objection to  
 13 form.

14 THE WITNESS: At the moment,  
 15 I can't think of anything.

16 BY MS. CASEY:

17 Q. Okay. My final questions  
 18 concern the contribution that Grace is  
 19 allegedly providing to the Plan on behalf  
 20 of the insurance companies for the  
 21 benefit of the 524(g) injunction.

22 I understand the cash  
 23 portion -- at least I understand the  
 24 argument that the ACC is present

PP Obj:  
R; BE;  
LO

**BEST****PP Obj.****Rj BE; LO**

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1 extent that the proceeds of those  
 2 settlements wind up in the Grace Trust as  
 3 opposed to the Grace Estate for  
 4 distribution to other people, they are a  
 5 settlement part of Grace's contribution  
 6 to the Trust.

7 Q. Has the ACC attempted to  
 8 apportion or value those portions of the  
 9 contributions made by Grace that are upon  
 10 Grace's behalf versus upon the insurer's  
 11 behalf?

12 MR. FINCH: You can answer  
 13 that yes or no.

14 THE WITNESS: Well, I will  
 15 answer it no and add I am not sure  
 16 how anybody could go about doing  
 17 that. It's what is known as a  
 18 lump sum deal.

19 MS. CASEY: I have no  
 20 further questions.

21 MR. SCHIAVONI: Actually,  
 22 could we let Mr. Speights from  
 23 South Carolina go first.

24 MR. FINCH: You are up, Dan.

1 MR. FINCH: Objection,  
 2 foundation.

3 BY MR. SPEIGHTS:

4 Q. Yes, you personally.

5 A. No.

6 Q. Was your law firm?

7 MR. FINCH: Objection, form,  
 8 foundation, relevance.

9 THE WITNESS: It depends on  
 10 how you define negotiations when  
 11 it comes to dealing with a  
 12 congressional enactment. My  
 13 partner, Mr. Inselbuch, to my  
 14 knowledge, had at least one  
 15 meeting with Senator Heflin on the  
 16 subject of the statute.

17 What other discussions,  
 18 either in committee or outside  
 19 committee or whatever,  
 20 Mr. Inselbuch might have been  
 21 involved with, I really don't  
 22 know. But he's being deposed on  
 23 June 12th, and I guess you could  
 24 ask him.

1 - - -  
 2 EXAMINATION  
 3 - - -

4 BY MR. SPEIGHTS:

5 Q. Mr. Lockwood, were you  
 6 involved in the negotiation of the 524 --  
 7 strike that.

8 Were you involved in the --

9 MS. BAIER: Dan, can you  
 10 speak up or come closer to the  
 11 phone or something?

12 THE WITNESS: Nobody can  
 13 hear you.

14 MR. SPEIGHTS: I picked up  
 15 the phone. I am not on speaker.

16 MR. FINCH: Now we can hear  
 17 you.

18 THE WITNESS: That's better.

19 MR. FINCH: That's better.

20 BY MR. SPEIGHTS:

21 Q. Let me start over again.  
 22 Mr. Lockwood, were you involved in the  
 23 negotiation of the 524(g) statute?

24 A. Me personally?

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**CPO**

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**PP Obj:  
Rj BE;  
F**

1 BY MR. SPEIGHTS:

2 Q. Would you agree with me that  
 3 the 524(g) statute always refers to the  
 4 word "Trust" in singular rather than  
 5 plural?

6 A. I would have to go back and  
 7 look at the statute to be sure of that.  
 8 If you tell me it does, I am not going to  
 9 argue with you about it.

10 Q. Well, I am actually not  
 11 going to tell you anything. But if you  
 12 don't recall without looking at the  
 13 statute, I certainly would accept that  
 14 answer.

15 A. I do not specifically recall  
 16 without looking at the statute.

17 Q. Do you recall any bankruptcy  
 18 that was contested and provides for two  
 19 asbestos trusts, two or more asbestos  
 20 trusts?

21 A. Do you mean a bankruptcy  
 22 where the Plan proposed to create two  
 23 trusts, and somebody said there could  
 24 only be one and that was the contest and

<p><i>PP Obj. RJ BE-1 F</i></p> <p>1 the court ruled on that?</p> <p>2 Q. I will accept that.</p> <p>3 A. I don't think I do recall</p> <p>4 any such bankruptcy.</p> <p>5 Q. How many bankruptcies do you</p> <p>6 recall where there had been separate</p> <p>7 trusts of property damage and personal</p> <p>8 injury?</p> <p>9 A. As I sit here right now, I</p> <p>10 can't think of one. I believe there have</p> <p>11 been some, but I am hard-pressed to</p> <p>12 identify one from memory. This was not a</p> <p>13 topic I was prepared to deal with:</p> <p>14 My recollection, however, is</p> <p>15 there were a number of bankruptcies in</p> <p>16 which there was no property damage trust</p> <p>17 at all, whether separate or as part of a</p> <p>18 single trust to which PI trusts were also</p> <p>19 channelled.</p> <p>20 Q. Mr. Lockwood, what was the</p> <p>21 status of the PI estimation proceedings</p> <p>22 when the ACC agreed, at least in</p> <p>23 principle, with the Debtors to resolve</p> <p>24 this bankruptcy?</p>	<p>Page 566</p> <p>1 claimants, both present and future,</p> <p>2 whenever it ended its presentation of the</p> <p>3 estimation?</p> <p>4 MS. BAIER: Objection as to</p> <p>5 form.</p> <p>6 MR. FINCH: Object to form.</p> <p>7 THE WITNESS: My</p> <p>8 recollection is that Grace had</p> <p>9 various numbers on the table from</p> <p>10 various witnesses, but they were</p> <p>11 all way too low.</p> <p>12 BY MR. SPEIGHTS:</p> <p>13 Q. Well, what is your</p> <p>14 recollection of the last number they were</p> <p>15 using before you settled?</p> <p>16 MS. BAIER: Objection as to</p> <p>17 form.</p> <p>18 MR. FINCH: Object form and</p> <p>19 lack of -- well, maybe not lack of</p> <p>20 foundation but lack of recall.</p> <p>21 THE WITNESS: When you say</p> <p>22 "they were using," using in what</p> <p>23 context?</p> <p>24 BY MR. SPEIGHTS:</p>
<p>1 A. There are others that are</p> <p>2 probably better equipped to be precise</p> <p>3 about that than I, but my general</p> <p>4 recollection was that I believe that</p> <p>5 Grace had basically completed putting on</p> <p>6 its case. And it was before the PI and</p> <p>7 FCR were putting on their case.</p> <p>8 But I really was not --</p> <p>9 unlike Mr. Finch, who is sitting here</p> <p>10 next to me, who actually was involved in</p> <p>11 trying that case, I wasn't. So I could</p> <p>12 be wrong about that.</p> <p>13 Q. Well, maybe you could</p> <p>14 represent Mr. Finch, and I could question</p> <p>15 him.</p> <p>16 Regardless -- and by the</p> <p>17 way --</p> <p>18 A. Suffice it to say, there had</p> <p>19 been a lot of witnesses put on by Grace</p> <p>20 at the time the case was over -- excuse</p> <p>21 me -- was postponed.</p> <p>22 Q. What was your understanding</p> <p>23 of Grace's position of the total amount</p> <p>24 that should be paid to asbestos PI</p>	<p>Page 567</p> <p>1 Q. Well, what is your</p> <p>2 understanding of Grace's last position of</p> <p>3 the total amount that should be paid to</p> <p>4 asbestos present and future PI claimants</p> <p>5 before the deal was negotiated with the</p> <p>6 ACC?</p> <p>7 MS. BAIER: Objection to</p> <p>8 form.</p> <p>9 MR. FINCH: Mr. Speights,</p> <p>10 are you asking for his</p> <p>11 recollection of what is the</p> <p>12 estimate of the total present and</p> <p>13 future liability for asbestos PI</p> <p>14 claims put forward through the</p> <p>15 testimony of Tom Florence in his</p> <p>16 expert report and testimony that</p> <p>17 occurred on March 31st, 2008, two</p> <p>18 days before the company rested its</p> <p>19 case?</p> <p>20 MR. SPEIGHTS: Well, that</p> <p>21 wasn't my question, but I will ask</p> <p>22 that. If Mr. Lockwood knows the</p> <p>23 answer to that, maybe that will</p> <p>24 suffice.</p>